

REMARKS

Reconsideration of the subject patent application is respectfully requested.

In the Final Office Action, Examiner states that claims 1, 13-14, 21 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dwinell et al. in view of Guala and in view of Lindstrom. Claims 2, 15-16 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dwinell et al. in view of Guala and in view of Lindstrom as applied to claims 1 and 14 and in further view of Fernandes. Claims 7 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Dwinell et al. in view of Guala and in view of Lindstrom as applied to claim 1 and in view of Korn. Claim 22 is rejected under 35 U.S.C. §103(a) as being unpatentable over Guala in view of Storar.

The Examiner has indicated the claims 3 and 6 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As set forth above in the amendments to the claims, new claim 24 has been prepared as a combination of claims 1, 2 and 3. Applicants believe that all of the required elements are set forth in claim 24 consistent with the Examiner's indication of allowance of dependant claim 3. With regard to claim 6, this claim has been amended such that its claim dependency depends from new claim 24.

The only other amending change made to the claims is in claim 20. The previous amendment to claim 20 intended to change the claim dependency from claim 19, now cancelled, to claim 16. Additionally, there were minor amendments to the text. In terms of the claim dependency that number "19" was deleted but the new number "16" although added was not underlined. Assuming that this claim number has not been

entered since it was not underlined as new text to be added, claim 20 as now currently amended adds the omitted underline to the claim number "16".

Although this is an amendment response after Final Action, the Examiner is requested to give fair and appropriate consideration to the remarks that follow with regard to independent claims 1 and 14. It will be fairly easy to see that there are recited claim elements that are not addressed in the Final Action, specifically paragraph 3. It will also be readily apparent that these specific claim elements as recited in claims 1 and 14 are not found in the prior art relied upon by the Examiner.

Focusing first on independent claim 1, the Examiner cites Dwinell et al. in combination with Guala and Lindstrom. In terms of the claim 1 elements, the Examiner specifically mentions an overcap, a drum plug, a top portion, a pair of living hinge strips, a top, a center section, first and second outer sections, a surrounding side wall, a center post, a sealing gasket and a tearing ear (tamper evidencing). While the Examiner equates the living hinges to the score lines, he states that Dwinell et al. does not teach the post extending from the center section. The Guala patent is cited as the basis for providing this missing claim element. The Lindstrom patent is cited for its disclosure of posts 46 that are received by base 14. Ultimately, the Examiner concludes that it would be obvious to combine these three references.

What the Examiner does not address is the fact that claim 1 also recites a pair of oppositely disposed flange sections, that are not disclosed in any of the cited reference. The Examiner also does not address the incompatibility between the three references being combined. First, the Lindstrom patent that is relied upon for the disclosure of pins 46 is not a structure that includes any type of container closure plug and the pins 46 are

not in unitary connection with an outer section, but instead rely on the use of webbing 54. As specifically stated in column 4 of the Lindstrom patent beginning with line 28, “the pins 46 are attached to the lids by means of webbing 54”. There is also a fundamental difference between applicant’s use of the first and second pins as part of the tamper-evidence means in that it is the deflection or bending of those pins that cause the web sections 69 to break open. In the Lindstrom patent any tamper evidencing that is provided occurs by deflection of webbing 54 and it is webbing 54 that breaks.

A further concern in considering the primary reference of Dwinell et al. is where or how one would redesign the Dwinell et al. structure to incorporate some type of pin or post for tamper evidencing. Claim 1 recites that the first and second pins are in unitary connection with the corresponding first and second outer sections, so as a starting point we know that the pins need to be positioned in some fashion that they can include their webbing 54 structures and there is nothing in Dwinell et al. which would provide a point of connection for webbing 54. If the Examiner intends to import only pins 46 from Lindstrom, then pins 46 by themselves do not provide any tamper evidencing capability. The only possibility for tamper evidencing from pins 46 is to include the additional structure of webbing 54. In order for webbing 54 to function it needs to have a point of connection to some other moveable structure and there is nothing provided in Dwinell et al. for that purpose.

In terms of what the Examiner believes to be the “center post” of Dwinell et al., this is not clear. It is noted that in the Final Action when the Examiner discusses the rejection of claims 1 and 14 various portions of Dwinell et al. are listed and in certain instances corresponding reference numbers are provided. Interestingly, this was not done

for the center post, at least in terms of a corresponding reference number, thereby leaving the applicants to guess or speculate as to what the Examiner believes to be the center post of Dwinell et al. The only possible structure seems to be segments 23 or perhaps segments 56, neither of which is “center(ed)” and neither of which is a “post”. If the grouping of segments is the Examiner’s choice for the referenced center post, the same deficiencies exit, at least in terms that the group of segments would not provide a “post”.

In order to redesign Dwinell et al. so as to provide a center post, the individual segments would need to be joined together into a post structure, clearly a significant redesign that is not contemplated by Dwinell et al. and this joined group of segments would then have to be centered and positioned within the center section of the top portion. Clearly, based on the size of the segments and their overall diameter they will not fit within the very narrow center section as defined by the pair of score lines. This would require either reducing the size of the group of segments in Dwinell et al. to a much smaller center post or expanding the size of the center section of the top portion or perhaps a little of both. Once again this is considered to be a fairly significant redesign of Dwinell et al. that would have to occur in order to combine the various features of the three cited references that the Examiner is relying upon.

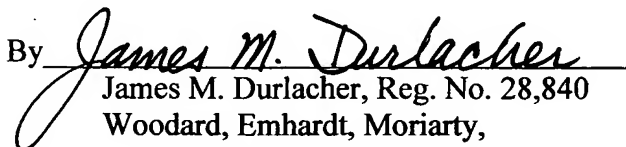
This seems to be a case of the Examiner utilizing hind site gained from a reading of the present patent application combined with some degree of indiscriminately picking and choosing components from various references that are not considered compatible with one another to try and create the claimed invention. It is clear that none of the references being combined suggest or teach the claimed invention and there is no suggestion or motivation for the combinations being made by the Examiner. The

applicable and relevant case law has already been presented in terms of what constitutes a proper as well as improper rejection under 35 U.S.C. §103(a). Applicants contend that the reconfiguring and redesigning of the various references to try and create by means of hind sight speculation the claimed invention constitutes much more than simply rearranging parts, the parts themselves are being redesign. Yet even with this redesigning, the resultant design fails to satisfy each and every element of claim 1 such as the pair of flange sections.

Independent claim 14 is similar to claim 1 in terms of several of the recited claim elements and specifically those elements that have been addressed as part of the remarks regarding claim 1. Accordingly, those foregoing remarks are believed to be fully applicable to the rejection of independent claim 14.

In view of the explanation and arguments provided herein regarding independent claims 1 and 14 and considering the indication of allowable subject matter in claims 3 and 6, claims 1, 2, 6, 7, 10, 13-16, 20-21 and 24 are believed to be in condition for allowance and such action by the Examiner is respectfully requested, notwithstanding that this application is under Final Action.

Respectfully submitted,

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